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A CHAPTER OF WABASH.

IN the NORTH AMERICAN REVIEW for July, 1869, appeared an article by Mr. C. F. Adams, Jr., entitled "A Chapter of Erie." The article was very vigorously written and its narrative abounded in exciting and dramatic details and personal incidents. Its author was then, in the best sense, a free-lance—a gentleman of fortune and leisure, with inherited independence and force of character, which he had cultivated and indulged on his own account. In that article Mr. Adams sharpened his sharp pen, characterized the transactions which he narrated, and pointed the moral of his tale.

The writer of the present article is a lawyer engaged in the daily practice of his profession, without fortune or leisure. Many of the men whose names appear in the following narrative are his personal acquaintances, and a few are his valued personal friends. For these reasons, and because he prefers to let his readers pass their own judgments, as well as because he feels sure the facts will speak for themselves with sufficient distinctness, the present writer will not indulge in any comments or criticisms of his own, but will limit himself to plain statements of fact. If, therefore, any one whose name appears here shall feel aggrieved, it will be the fault of the facts and not of the writer.

When compared with the "Chapter of Erie," the present article will present some notable contrasts. For example, Mr. Adams has now succeeded to the Presidency of the Union Pacific Railway Company, of which Mr. Jay Gould had control from 1874 to 1884, and his valiant pen and voice have gone silent. On the other hand, Mr. Gould remains the leading figure in this "Chapter of Wabash," as he was of Erie. In the present narrative, the reader will note the relative disappearance of the special forms of judicial usurpation and misconduct which lent such a

lurid aspect to Mr. Adams's story; and in their place will be noted one sweeping judicial act, followed by two or three suppletory acts which accomplished the designs of the actors with complete effectiveness. Much of the vaticination, too, in which Mr. Adams indulged, has now become fact. Mr. Adams dealt with the history of a single line of railroad running from New York City to Lake Erie, and covering, with its branches and dependencies, only 773 miles of road. This narrative has to do with a modern consolidated railway or "system," extending westward from Toledo to Chicago, Kansas City, St. Joseph, and Omaha, made up of vast and intricate networks of roads in the States of Ohio, Michigan, Indiana, Illinois, Missouri, and Iowa, and embracing in the height of its power and expansion nearly 5,000 miles of road. The Wabash thus becomes typical of the great changes in railway development which Mr. Adams predicted in 1869. Almost the only constant factor common to Erie and Wabash will be found to be Mr. Jay Gould. Whether his methods only have changed since 1869 will be seen as our story progresses. Other changes and contrasts, for better or worse, will also appear.

Like Erie, the history of the Wabash Railway has been a checkered one. Its original stem or root was a corporation chartered in 1853, under the laws of Ohio, which, under the name of the Toledo & Illinois Railroad Company, built a road 75 miles in length from Toledo, Ohio, to the State line of Indiana. This line, under other corporations, was extended within the next six years from the Indiana State line to Meredosia and Naples, Illinois, and thence to Clayton and Carthage, in the same State, and in the early part of 1865, the several corporations now referred to were consolidated under the name of the Toledo, Wabash & Western Railway Company, under the laws of the States of Ohio, Indiana, and Illinois, a process usually called the re-organization of 1877.

Thus, between 1853 and 1865, no less than ten corporations had existed, which at last constituted by successive consolidations the Toledo, Wabash & Western Railroad Company, owning 483 miles of railroad. These lines thus consolidated may be described as the trunk or backbone of the future Wabash system.

A new process or form of increment now began, the process of absorption—acquisition by purchase of new lines, alternating with foreclosures, consolidations, and re-organizations of old and

new lines. In this process, the Decatur & East St. Louis Railroad Company, chartered in 1867, with its acquisitions, was consolidated with the Toledo, Wabash & Western, which, in turn, in 1876, was succeeded by a new corporation, called the Wabash Railway Company, separately chartered in each of the States of Ohio, Indiana, and Illinois, and the three corporations were then consolidated, in 1877, under the same name, and became possessed of all the property and rights of the Toledo, Wabash & Western Railway Company, and in 1877, 1878, and 1879 the Wabash Company acquired the property and control of three other railroad corporations.

The eighteen corporations, with their lines as now specified, covering 847 miles of railroad, made up what was called "The Wabash System East of the Mississippi River."

With the North Missouri Railroad Company, a Missouri corporation chartered in 1851, as the stem, between 1872 and 1879, by purchases, leases, and consolidations, twelve original corporations, with about 679 miles of railroad west of the Mississippi River, in the States of Missouri and Iowa, became merged into the St. Louis, Kansas City & Northern Railway Company, making what has been called "The Wabash System West of the Mississippi"; and in the latter year the Wabash Railway Company, owning the lines heretofore described east of the Mississippi, was consolidated under the laws of Ohio, Indiana, Illinois, and Missouri, with the St. Louis, Kansas City & Northern Railway Company, under the name of the Wabash, St. Louis & Pacific Railway, the name under which it has since existed. The two systems, now united into one, the product of the union of thirty separate original companies, owned or controlled at this time about 1,526 miles of railroad.

But the process of absorption did not stop here, and between 1879 and 1883 the railroad property of thirty-eight other corporations, including two bridge companies, lying in the States of Iowa, Missouri, Illinois, Indiana, and Michigan, was acquired by purchase, lease, consolidation, and re-organization. During this process the Wabash, St. Louis & Pacific Railway Company and its predecessor and constituent companies had built branches and completed or extended its acquired lines, so that in June, 1880, it owned and controlled a total railroad mileage of 3,518 miles. After June, 1880, it acquired 1,296½ miles more, making

a total mileage in 1883 of 4,814½ miles, besides two bridges,—one over the Mississippi and one over the Missouri,—extensive independent terminal facilities in connection with other companies, and large rights of use of other lines connected with its own.

The foregoing may be called the *corporate* history of Wabash.

The task of exhibiting, even in brief outline, the *financial* history of Wabash is a most difficult one, and it can be done only summarily within the limits of a single magazine article.

Recurring to the re-organization and consolidation of 1877, we find that prior to that date and contemporaneously with the re-organization, the various original companies and their successor consolidated companies had made sixteen separate mortgages, to secure bonds to the amount then outstanding of \$38,179,475.50, which were variously described as “firsts,” “seconds,” “consolidated” or “consol,” “gold,” “equipment,” “chattel,” “funded debt,” “graduated,” and “graduated scrip certificates ;” that between 1877 and 1879, when the Wabash system east of the Mississippi was completed in the first instance, the Wabash Railway had issued and assumed an additional amount of first mortgage and income bonds of \$9,274,400 ; that between 1851 and 1879, when the St. Louis, Kansas City & Northern Railroad Company became consolidated with the Wabash Railway, the lines west of the Mississippi had issued \$16,292,500 of bonds.

December 31st, 1877, the company reported its funded debt as \$20,311,557.60 ; December 31st, 1879, as \$35,267,250. The common stock of the company was then reported as \$20,000,000, and the preferred stock as \$20,000,000, a total of capital stock and funded debt of \$75,267,250.

December 31st, 1881, the funded debt *and* capital stock were reported as \$75,464,550 ; and December 31st, 1882, the funded debt *alone* was reported as \$70,937,854.15 ; the common stock as \$27,140,500, and the preferred stock as \$23,034,200—a total of *capital stock and funded debt* of \$121,112,554.15, an increase of funded debt and capital stock, in one year, of \$45,648,004.15. December 31st, 1883, the funded debt was reported as \$76,394,075, and December 31st, 1884, as \$76,434,834, the capital stock remaining as reported for 1882, viz.: \$50,174,700.

The great stages, or articulating points, in the progress of Wabash will be seen to have been the reorganization and consol-

idation of 1867, which resulted in the Toledo, Wabash & Western; the reorganization of 1877, which resulted in the Wabash Railway; and the consolidation of 1879, which resulted in the Wabash, St. Louis & Pacific. Each of these events was the signal and occasion of the issue of general or "consolidated" mortgages, called, respectively, the "consolidated sinking fund" mortgage of 1867, for \$15,000,000; the "general" mortgage of 1879, for \$2,000,000; and the "general" mortgage of 1880, for \$50,000,000. Besides this, in nearly every instance, the acquisition of new lines was signalized by new mortgages on single roads and by "divisional" mortgages, so called, on groups of lines, or roads forming a continuous line. Of the latter phase of railroad mortgage "development" the Wabash presents nine examples.

In 1883 there were on the Wabash lines thirty-one mortgages, not including "real estate notes" and "funded debt" obligations, amounting to over \$3,000,000, most of the separate lines being covered by successive mortgages at least four deep and in some cases seven deep.

The "general" mortgage of 1880 deserves further notice. It bears date of June 1st, 1880, recites as its objects "the retiring of specific liens on sections made by corporations formerly owning such sections," "the discharge of indebtedness for equipment assumed by the company," "the extension of the railroad by additional lines," and "the completing, etc., of the road of the company," and provides for the issue for these purposes of \$50,000,000 of forty-year six per cent. gold bonds. This mortgage covered all the lines and leasehold interests of the Wabash at its date. Of these bonds, there were issued and sold prior to January 1st, 1884, \$17,000,000, but it does not appear that a single prior bond was retired or paid by means of this issue. About \$11,500,000 of these bonds was "marketed" in Great Britain, at a price of from 95 to 80 per cent.

In May, 1883, came the mortgage known as the "collateral trust" mortgage, by which was mortgaged, for \$10,000,000, a large number of bonds, stocks, and "other securities," the property of the Wabash. Under this mortgage were issued before January 1st, 1884, bonds to the amount of \$5,671,000. This mortgage took the form of a tripartite contract between the Wabash, St. Louis & Pacific, the Mercantile Trust Company of New York, and the St. Louis, Iron Mountain & Southern Railway, the

Wabash, St. Louis & Pacific Railroad having been leased April 10th, 1883, to the last named company for 99 years.

December 21st, 1883, was executed the last of the Wabash mortgages, called the "Indemnity" mortgage of the Wabash, St. Louis & Pacific, to the St. Louis, Iron Mountain & Southern, to secure all advances which might be made by the latter to the former company under the lease just referred to.

It appears that there were paid three "quarterly dividends" on the preferred stock of the Wabash, May 15th, 1881,—within less than a year after the issue of the general mortgage bonds,—and again August 15th, 1881, and November 15th, 1881, of $1\frac{1}{4}$ per cent. each,—amounting to \$1,036,539: and under the influence of these manipulations the common stock was carried up from 29 in November, 1879, to 60 in June, 1881, while the preferred rose during the same period from 59 to $96\frac{1}{4}$.

The *personal* history of the Wabash will next be noticed.

During 1876 and part of 1877 the Wabash was in the hands of ex-Governor J. D. Cox, of Ohio, as Receiver. In 1878, James A. Roosevelt, of New York, was President, A. L. Hopkins being Vice-President, with Solon Humphreys, Cyrus W. Field, A. L. Hopkins, and Charles Ridgeley, of Illinois, among the directors. In 1879 Cyrus W. Field was President, Hopkins Vice-President and General Manager, Messrs. Sidney Dillon, Solon Humphreys, Cyrus W. Field, Jay Gould, and Russell Sage being five of the eleven directors. In 1880 Solon Humphreys, of New York, was President, and Hopkins Vice-President, with Humphreys, Gould, Dillon, Sage, Ridgeley, and James F. Joy, of Michigan, as directors. In 1881 Jay Gould was President, Hopkins First Vice-President, with Humphreys, Gould, Dillon, Sage, Ridgeley and Joy as directors. In 1882 Gould was President, Hopkins Vice-President, Gould, Sage, Dillon, Humphreys, Ridgeley, and Joy directors. In 1883 Gould was still President and Hopkins Second Vice-President, with Gould, Sage, Dillon, Humphreys, Ridgeley, and Joy as directors. During all these changes General Wager Swayne was the general solicitor and counsel of the Wabash down to 1883.

Reference has already been made to the fact of the lease of the Wabash to the St. Louis, Iron Mountain & Southern in 1883. The Iron Mountain was at this time, and before the lease of the Wabash, leased or owned by the Missouri Pacific. By the former lease, therefore, the Missouri Pacific became the real lessee of the

Wabash, a fact then carefully announced to the world as "giving practical control of the Wabash to the Missouri Pacific."* From 1880 to 1883, and even earlier, Jay Gould was the president and chief stockholder of the Missouri Pacific, and from 1880 to 1884 Sidney Dillon, Russell Sage, and Jay Gould were directors.

The Iron Mountain (St. Louis, Iron Mountain & Southern) is a railroad running south from St. Louis to Texarkana, Texas, with branches to various points, making up a total mileage of some 900 miles. From 1881 to 1885 Jay Gould, Russell Sage, and Sidney Dillon were directors of this company; and from 1882 to 1885 Jay Gould was its President; and from 1883 to 1885 A. L. Hopkins was its Second Vice-President. It will, therefore, be seen that in each of the three roads,—the Wabash, the Missouri Pacific, and the Iron Mountain,—Gould, Sage, and Dillon were directors; and that from 1881 Jay Gould was the President of each of the three roads. It is also a well authenticated and undisputed fact that Gould was during these years the largest single stockholder in each of these roads, and, with his associates, Dillon, Sage, and Humphreys, owned and controlled a majority of the stock of each.

The Wabash having been leased to the Iron Mountain, which in turn was leased to the Missouri Pacific, on May 21st, 1884, a special meeting of the Executive Committee of the directors of the Wabash was held in New York, at which were present, as appears from the minutes of the meeting, Messrs. Gould, Humphreys, Hopkins, Dillon, and Sage. At this meeting a notice was read from the Iron Mountain Company to the Wabash, stating that, under the lease of the latter to the former, the lines of the Wabash had been operated for a period of thirteen months, during which time the net earnings had been insufficient to pay the interest, rentals, taxes, and other fixed charges of the Wabash, and that the Iron Mountain Company had elected to advance the deficiency under its lease of the Wabash. (It should here be stated that under the lease of April 10th, 1883, of the Wabash lines to the Iron Mountain Company, it was provided that if the net earnings of the Wabash should not be sufficient to pay its interest and other fixed charges, the Iron Mountain Company might elect to advance the funds required for that purpose, and such advances

* Poor's Railroad Manual, 1883, 1884.

should become a preferred debt and lien upon the lines of the Wabash ; but if the lessee should not elect to make such advances, the lessor might thereupon elect to terminate the lease.) The notice above referred to further stated that the deficit for 1883 exceeded \$2,000,000, and that thus far in the year 1884 there had been no material improvement, and notified the Wabash Company that the Iron Mountain could not undertake to continue its advances, proposing that the holders of the junior bonds of the main lines of the Wabash should fund their coupons for such a period as would enable the business “to grow up to the expenses and interest charges.” The Chairman, Mr. Gould, then stated that immediate action was necessary in consequence of this notice. Whereupon Mr. Sidney Dillon offered a preamble and resolution to the effect that notice, as heretofore specified, having been received from the Iron Mountain, it became necessary to ask the holders of some of the junior mortgages of the main lines of the Wabash, and of such leased and acquired lines as had not earned interest on their mortgages, to fund their coupons until such time as the earnings might permit resumption of payment ; and it was further, “*Resolved*, That in view of this necessity, and for the protection of the property, steps be taken at once to secure the appointment of a receiver.” “On motion of Mr. Gould, voted that a committee of two, consisting of Mr. A. L. Hopkins and Mr. J. F. Joy, be, and the same hereby are appointed to carry out the necessary details embraced in the foregoing resolution.”

Thereupon, on the 28th day of May, 1884, six days after the meeting just referred to, General Wager Swayne arrived in St. Louis with a bill in equity, or complaint, on behalf of the Wabash Company, which was verified by A. L. Hopkins on the 22d day of May—the day following the meeting already referred to—and presented the same, with an application for the appointment of Solon Humphreys and Thomas E. Tutt, as Receivers, to Judge Samuel Treat, District Judge of the Eastern District of Missouri, a gentleman who had for some time been eligible, by reason of age and length of service, for retirement from the bench. It has also been credibly stated, without contradiction, that General Swayne carried to St. Louis, with the bill of complaint, the bond, already signed, as Receivers, of Humphreys and Tutt, the bond being signed in New York by John T. Terry, a partner of Humphreys, and by Russell Sage and Sidney Dillon, as sureties. For some reason,

Judge Treat, although readily assenting to the appointment of receivers upon the application of the Wabash Company, and also assenting to the selection of Humphreys and Tutt, directed General Swayne to submit the application to the Circuit Judge, David J. Brewer, who was appointed Judge in 1884, and who is a nephew of Mr. Cyrus W. Field. General Swayne accordingly visited Leavenworth, and obtained from Judge Brewer privately the order of appointment of Humphreys and Tutt as Receivers, dated May 29th, 1884, the order further providing for the immediate surrender of all the lines of the Wabash to the Receivers, and likewise directing the Receivers to pay all rentals, accrued or hereafter to accrue, upon all leased lines, and for the use of terminals and rentals upon rolling stock. Messrs. Humphreys and Tutt entered upon their receivership upon the 29th day of May, 1884.

It will be seen at this point that this receivership was ordered by Judge Brewer upon the application of the debtor company itself before a default had taken place, and without notice to any creditor, and that one of the Receivers had, in 1880, been the president of the company, and from 1879 to 1883 continuously a director. It is also an undoubted fact that Mr. Humphreys had been a large stockholder as well as an influential director during all these years. Mr. Tutt, who was the president of a bank in St. Louis, was at the time of his appointment a director of the Wabash, as well as a stockholder. Neither of these Receivers was, in any proper sense, a railroad man, and neither of them had had practical experience in the management of railroad properties. Thus this immense property, called the Wabash system, was instantly thrown into the hands of receivers upon an application made solely by the Wabash Company itself, before default, without the knowledge or notice of any one, except the immediate actors; and one of those most largely responsible for the conduct of its affairs for the previous six years was appointed one of its Receivers, in association with another person, whose connection with the Wabash was only a little less intimate and responsible.

General Swayne has stated in testimony given before the Master at St. Louis, that he applied to the trustee of the general mortgage to take steps to secure the property, and that the trustee declined to do so because no default had then taken place. Thereupon he himself applied on behalf of the Wabash Company. He further stated that the selection of Receiver was previously approved by

the "trustees of the general mortgage, and by the trustees of more than half in amount of the underlying liens." The records of the Wabash case contain no other evidence of the knowledge or assent of any party interested except the Wabash Company acting through their counsel, and it is certain that the bondholders, who were the real parties in interest, knew nothing of the movement for receivers until their appointment was announced.

In the bill of complaint of the Wabash Company, upon which the appointment of receivers was made, it was stated that the Iron Mountain Company was then operating all the lines of the Wabash under the lease of April 10th, 1883 ; and the bill proceeds thereupon to make the following statement : "That the Wabash Company also issued within the last two years its promissory notes for very large sums of money, and in order to provide means for the meeting of its expenses, and the keeping of its road in successful operation and completing its lines as aforesaid, *induced a number of persons of high financial standing* to become indorsers of said notes, and by means of a credit given by such indorsements was enabled to negotiate said notes for value, and received the proceeds thereof, and that there will be due on said promissory notes at maturity about the sum of \$2,200,000." The bill further stated that a floating debt had accumulated against the Wabash, "amounting in the aggregate to about the sum of \$4,784,145.01." The bill further set forth that it was very important that receivers should be appointed "to protect the indorsers upon said promissory notes." The notes here referred to bore the indorsements of Jay Gould, Russell Sage, Sidney Dillon, and Solon Humphreys.

On May 30th, 1884, the day after the appointment of receivers, the Wabash Company filed its petition in the Circuit Court at St. Louis, setting forth that "certain promissory notes of the Wabash, amounting to about the sum of \$2,300,000, are outstanding, and will fall due from time to time, and that said promissory notes are secured by hypothecation of a large number of collateral trust bonds of the Wabash, and further by the indorsements of sundry individuals of high credit and financial standing." It further sets forth that the Wabash had exhibited "to the attorneys for the defendants . . . the names of the indorsers of the said promissory notes; but does not embody the names of said indorsers in this application, because of *the personal incon-*

venience and injury which might result to them from the publicity thereby given to their business affairs. Complainant, however, *for the sake of entire frankness*, does hereby disclose that Solon Humphreys, one of the Receivers appointed herein, is an indorser upon several of said promissory notes." And on May 31st, 1884, the court, Samuel Treat, J., entered the following order: "It is ordered that the Receivers herein shall protect, by their obligations as Receivers, the promissory notes of complainant corporation falling due May 31st, 1884, amounting in the aggregate to the sum of \$223,333, which notes are secured by the individual indorsements and the collateral trust bonds referred to in the original bill of complaint, and in the petition filed herein May 30th, 1884," and also all similar notes thereafter maturing. Subsequently, by an order dated June 18th, 1884, upon application of the solicitors of the Central Trust Company of New York, the foregoing order was modified by adding thereto the following: "This order shall not be construed as establishing a priority of lien in favor of such Receivers' obligations, or of obligations of said railway company now outstanding, but such priorities shall be subject to the further direction of this court."

Thus it appears that the first action of the Receivers, as well as of the court, was the conversion of the notes of the Wabash, indorsed by Gould, Sage, Dillon, and Humphreys, into Receivers' obligations, the original notes being, of course, only ordinary unsecured debts of the company, and it is worthy of special notice here that the published plan of Wabash re-organization provides for \$3,000,000 of *preferred* debenture bonds, to be used to cover the *liabilities of Gould, Dillon, Humphreys, and Sage, on account of the indorsed notes already referred to.*

It has already been stated that the Iron Mountain Company had informed the Wabash, May 19th, 1884, that the deficit in the operations of the Wabash under the lease for the year 1883 exceeded \$2,000,000, and that under the lease the Iron Mountain had elected to make advances for that amount. As the Missouri Pacific was the lessee or owner of the Iron Mountain, the advances for this deficit were an obligation of the Missouri Pacific. Accordingly, June 6th, 1884, upon the application of Humphreys and Tutt, Receivers, the court at St. Louis made its order directing the receivers to issue certificates "to an amount not exceeding \$2,000,000, for the purpose of paying wages, taxes, mechanics'

liens, and for supplies," these Receivers' certificates being made, in terms, a first lien on all the property of the Wabash Company.

On the 12th day of March, 1885, the Central Trust Company of New York, the trustee under the general mortgage of the Wabash, filed a bill at St. Louis for the foreclosure of that mortgage; and this bill was subsequently consolidated with the original bill of the Wabash Company asking for the appointment of receivers; and the foreclosure proceedings were continued until January, 1886, when a final decree of foreclosure and sale was entered. By the terms of this decree, the entire properties of the Wabash were ordered sold, subject to prior mortgages and to the Receivers' obligations, which latter the purchaser was decreed to pay as the court might thereafter order.

The sale took place on the 26th day of April, 1886, and the entire property of the Wabash was purchased by a committee consisting of James F. Joy, a director of the Wabash and President of the Detroit Terminal Company; Thomas H. Hubbard, attorney of the Central Trust Company, of New York, and the representative of the English holders of the general mortgage bonds; O. D. Ashley, Secretary of the Wabash Receivers; and Edgar F. Welles, of Hartford. This committee, in the summer of 1886, proposed to the holders of the bonds issued under mortgages prior to the general mortgage of 1880, that they should fund into 5 per cent. bonds of the new Wabash Company all their accrued interest and reduce the rate of interest for the future upon their bonds from 7 and 6 per cent. to a uniform rate of 5 per cent. This reduction being in the interest solely of the junior or later securities of the company, particularly the general mortgage and collateral trust bondholders, as well as the stockholders of the company, was naturally refused by many of the prior bondholders, upon whose bonds at that time interest for over two years was due and unpaid.

One of the most noteworthy performances of the Wabash junto now occurred. Gen. Wager Swayne, who had been and still was the solicitor of the Wabash, but who now appeared as counsel for the purchasing committee, repaired to St. Louis, and there obtained from Judges Brewer and Treat the two following orders, dated September 21st, 1886:

"Ordered, that from any surplus in their hands, arising from the operation of the property in their charge, over and above

necessary operating expenses, the Receivers herein are authorized, *as to them may seem meet*, to pay in whole or in part such interest coupons of bonds secured by mortgage superior in right to the mortgages foreclosed herein, *as they may be requested to pay by the purchasers at the sale* made under the decree herein, their successors or assigns,”

“*Ordered*, that in case the purchasers at the sale under the decrees herein, or their successors or assigns, shall become possessed, by purchase or otherwise, of any claims or demands against the property in charge of the Receivers in this cause, they shall be subrogated to the rights of the original holders of said claims or demands.”

Subsequently, General Swayne, at the hearing before Judge Gresham, avowed his sole responsibility for these orders, virtually acquitting both court and clients of all complicity therein. These orders were characterized by one of the counsel for dissenting bondholders at the same hearing as “the highwayman’s clutch on our throat, the robber’s demand, ‘your money or your life!’” and Judge Gresham felt constrained to say of them that “the boldness of this scheme to aid the purchasing committee, by denying equal rights to all bondholders secured by the same mortgages, is equaled only by its injustice.” Seeing no prospect of payment, or of a proper provision for payment, according to the terms of their mortgages, the holders of some of the prior mortgage bonds, in October, 1886, applied to the Circuit Court for the Northern District of Illinois for the appointment of separate and new receivers for the Wabash lines lying east of the Mississippi. Upon this application a considerable amount of testimony was taken, upon which the final arguments were made before Judge Gresham in November, 1886. This testimony before Judge Gresham disclosed many noteworthy facts, among them these: that neither Humphreys nor Tutt had any personal qualifications for their positions as Receivers; that in point of fact neither of them during the receivership, from May, 1884, to November, 1886, had given attention to the practical management of the Wabash properties, one residing in New York City, and only occasionally seeing the property, and the other, with even less railroad experience, confessing on the witness stand that he had never once inspected the road, except as he had passed over it as any other passenger would have done. The evidence likewise showed

that Tutt, just before his appointment, and after he was aware of the purpose to appoint him, being the president of a bank in St. Louis, to which the Wabash owed a large sum of money, forced the company, by reason of its wish to secure his appointment, to pay the debt, and then accepted his appointment; that Humphreys, besides his interest as one of the indorsers of the company's notes for over two millions of dollars, was interested in the common and preferred stock of the company, as well as in the collateral trust bonds and in what is known as the Chicago terminals, and that in pursuit of this latter interest he, while Receiver, had resisted the claims of the bondholders to a mortgage lien on that property.

The evidence also showed that the mines and property of the Ellsworth Coal Company were adjacent to the Wabash Railway; that Gould, Humphreys, Dillon, Sage, Hopkins, and Ridgeley, all directors of the Wabash, were stockholders of this coal company; that Humphreys and Tutt, as Receivers, up to September 1st, 1886, paid to this company nearly \$500,000 for coal, besides allowing rebates of freight on coal shipped by the coal company of over \$80,000; that the regular tariff freight was \$2 per ton, which was reduced to \$1.30 for this company's coal, after which 30 cents per ton was allowed as rebate. The auditor of the Receivers also stated under oath that the Receivers had paid out \$3,260,519.23 from the Receivers' earnings, on account of liabilities incurred prior to the receivership, and that \$500,000 more was due and unpaid; that there had accrued of interest, during the receivership, \$4,390,000, which was due and unpaid, and that there was \$3,200,000 of unpaid Receivers' obligations, making a total indebtedness accrued, during thirty months of the receivership, of \$7,590,000, to pay which the Receivers had then in hand about \$290,000.

Upon this evidence, of which the foregoing is but a fragment, the Circuit Court at Chicago, in December, 1886, removed Humphreys and Tutt from their positions and appointed Thomas M. Cooley, of Michigan, as sole Receiver of all the Wabash lines lying in the Illinois circuit. The same order was at once made in the Ohio circuit, and thus all the Wabash lines east of the Mississippi passed out of the hands of Humphreys and Tutt. During October, 1887, Judge Brewer ordered the payment, to Humphreys and Tutt, for services as Receivers, of the sum of \$140,000 *on account*.

Such is the history of the rise and fall of Wabash.

The story now told needs only brief epitomizing, thus : The Wabash system arose from the absorption and consolidation of sixty-eight separate original corporations ; when thus consolidated the system owned and controlled in 1883 about 4,814 miles of railroad in the six States of Ohio, Michigan, Indiana, Illinois, Missouri, and Iowa ; its capital stock was increased between 1877 and 1883 from \$40,000,000 to \$50,174,700 ; its funded or mortgage debt was increased during the same period from \$20,311,570.60 to \$76,394,075 ; three quarterly "dividends" were paid on the entire preferred stock in 1881—the year after the issue of the general mortgage in 1880—amounting to \$1,036,539 ; within two years and a half after these "dividends," the company made default on the interest of all its mortgage debt ; in May, 1884, the entire property was, on the application of the debtor company alone, secretly placed in the hands of Humphreys and Tutt, two of its former directors and officers, men without any special qualifications for railroad management, and who had been part of the directorate which had brought the system to bankruptcy ; immediately after the appointment of Humphreys and Tutt, the Circuit Court of the Eastern District of Missouri directed the issue of \$2,300,000 of Receivers' obligations to "protect" the indorsements of Wabash notes by Gould, Dillon, Sage, and Humphreys ; the same court, six days later, directed the further issue of \$2,000,000 of Receivers' certificates—made a first lien on all the Wabash property—to pay so-called Wabash indebtedness, which, by the terms of its lease to the Iron Mountain, which had been, in turn, leased to the Missouri Pacific, was the indebtedness of the Missouri Pacific ; as the result of two years and a half of this receivership, there was paid out of the Receivers' earnings, on account of liabilities incurred prior to the receivership, \$3,260,519.23, leaving \$500,000 still due ; as the grand result of the receivership of Humphreys and Tutt, interest has accrued to the amount of \$4,390,000, all due and unpaid, and of Receivers' obligations, \$3,200,000, a total during two years and a half of \$7,590,000, with \$290,000 of cash in hand ; the property being sold to a purchasing committee of which the chairman, Joy, was a former Wabash director, and another member, Ashley, was the Secretary of the Receivers, a demand was made of the prior mortgage bondholders to fund into new Wabash bonds their past due interest

and to reduce the interest on their bonds for the future from six and seven per cent. to five per cent. ; upon application of prior mortgage bondholders, the United States Circuit Court at Chicago removed Humphreys and Tutt for misconduct as Receivers, and appointed a new and separate Receiver for the Wabash lines east of the Mississippi River.

In closing his "Chapter of Erie," Mr. Adams indulged in this observation: "History never quite repeats itself, and the old familiar enemies may even now confront us, though arrayed in such a modern garb that no suspicion is excited. Americans are apt pupils, and among them there are probably some who have not observed Fisk and Vanderbilt and Hoffman without a thought of bettering their instructions. . . . It is not pleasant to take such views of the future; yet they are irresistibly suggested by the events which have been narrated. They seem to be in the nature of direct inferences."

Whether all this would apply with equal or greater force, if the names of Gould and Humphreys and Brewer were substituted for the Erie trio, the present writer leaves to his readers to say, as well as what other views may be "irresistibly suggested by the events which have been narrated."

The "withering satire" of Juvenal gave this warning nearly 1,900 years ago:

"Dedit hanc contagio labem,
Et dabit in plures; sicut grex totus in agris
Unius scabie cadit et porrigine porci,
Uvaeque conspecta livorem ducit ab uva;
Foedius hoc aliquid quandoque crudebis amictu;
Nemo repente fuit turpissimus."*

*Sat. II., 714.